

## Department of Energy

## § 1021.300

systems, or processes, to noncompetitive awards of financial assistance, and to sole-source joint ventures, unless the action is categorically excluded from preparation of an EA or EIS under subpart D of this part.

(b) When relevant in DOE's judgment, DOE shall require that offeror's submit environmental data and analyses as a discrete part of the offeror's proposal. DOE shall specify in its solicitation document the type of information and level of detail for environmental data and analyses so required. The data will be limited to those reasonably available to offerors.

(c) DOE shall independently evaluate and verify the accuracy of environmental data and analyses submitted by offerors.

(d) For offers in the competitive range, DOE shall prepare and consider an environmental critique before the selection.

(e) The environmental critique will be subject to the confidentiality requirements of the procurement process.

(f) The environmental critique will evaluate the environmental data and analyses submitted by offerors; it may also evaluate supplemental information developed by DOE as necessary for a reasoned decision.

(g) The environmental critique will focus on environmental issues that are pertinent to a decision on proposals and will include:

(1) A brief discussion of the purpose of the procurement and each offer, including any site, system, or process variations among the offers having environmental implications;

(2) A discussion of the salient characteristics of each offeror's proposed site, system, or process as well as alternative sites, systems, or processes;

(3) A brief comparative evaluation of the potential environmental impacts of the offers, which will address direct and indirect effects, short-term and long-term effects, proposed mitigation measures, adverse effects that cannot be avoided, areas where important environmental information is incomplete and unavailable, unresolved environmental issues and practicable mitigating measures not included in the offeror's proposal; and

(4) To the extent known for each offer, a list of Federal, Tribal, state, and local government permits, licenses, and approvals that must be obtained.

(h) DOE shall prepare a publicly available environmental synopsis, based on the environmental critique, to document the consideration given to environmental factors and to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. The synopsis will not contain business, confidential, trade secret or other information that DOE otherwise would not disclose pursuant to 18 U.S.C. 1905, the confidentiality requirements of the competitive procurement process, 5 U.S.C. 552(b) and 41 U.S.C. 423. To assure compliance with this requirement, the synopsis will not contain data or other information that may in any way reveal the identity of offerors. After a selection has been made, the environmental synopsis shall be filed with EPA, shall be made publicly available, and shall be incorporated in any NEPA document prepared under paragraph (i) of this section.

(i) If an EA or EIS is required, DOE shall prepare, consider and publish the EA or EIS in conformance with the CEQ Regulations and other provisions of this part before taking any action pursuant to the contract or award of financial assistance (except as provided at 40 CFR 1506.1 and §1021.211 of this part). If the NEPA process is not completed before the award of the contract, financial assistance, or joint venture, then the contract, financial assistance, or joint venture shall be contingent on completion of the NEPA process (except as provided at 40 CFR 1506.1 and §1021.211 of this part). DOE shall phase subsequent contract work to allow the NEPA review process to be completed in advance of a go/no-go decision.

### Subpart C—Implementing Procedures

#### § 1021.300 General requirements.

(a) DOE shall determine, under the procedures in the CEQ Regulations and this part, whether any DOE proposal:

(1) Requires preparation of an EIS;

(2) Requires preparation of an EA; or  
 (3) Is categorically excluded from preparation of either an EIS or an EA. DOE shall prepare any pertinent documents as required by NEPA, the CEQ Regulations, or this part.

(b) Notwithstanding any other provision of these regulations, DOE may prepare a NEPA document for any DOE action at any time in order to further the purposes of NEPA. This may be done to analyze the consequences of ongoing activities, support DOE planning, assess the need for mitigation, fully disclose the potential environmental consequences of DOE actions, or for any other reason. Documents prepared under this paragraph shall be prepared in the same manner as DOE documents prepared under paragraph (a) of this section.

**§ 1021.301 Agency review and public participation.**

(a) DOE shall make its NEPA documents available to other Federal agencies, states, local governments, American Indian tribes, interested groups, and the general public, in accordance with 40 CFR 1506.6, except as provided in § 1021.340 of this part.

(b) Wherever feasible, DOE NEPA documents shall explain technical, scientific, or military terms or measurements using terms familiar to the general public, in accordance with 40 CFR 1502.8.

(c) DOE shall notify the host state and host tribe of a DOE determination to prepare an EA or EIS for a DOE proposal, and may notify any other state or American Indian tribe that, in DOE's judgment, may be affected by the proposal.

(d) DOE shall provide the host state and host tribe with an opportunity to review and comment on any DOE EA prior to DOE's approval of the EA. DOE may also provide any other state or American Indian tribe with the same opportunity if, in DOE's judgment, the state or tribe may be affected by the proposed action. At DOE's discretion, this review period shall be from 14 to 30 days. DOE shall consider all comments received from a state or tribe during the review period before approving or modifying the EA, as appropriate. If all states and tribes afforded this oppor-

tunity for preapproval review waive such opportunity, or provide a response before the end of the comment period, DOE may proceed to approve or take other appropriate action on the EA before the end of the review period.

(e) Paragraphs (c) and (d) of this section shall not apply to power marketing actions, such as rate-setting, in which a state or American Indian tribe is a customer, or to any other circumstances where DOE determines that such advance information could create a conflict of interest.

**§ 1021.310 Environmental impact statements.**

DOE shall prepare and circulate EISs and related RODs in accordance with the requirements of the CEQ Regulations, as supplemented by this subpart. DOE shall include in draft and final EISs a disclosure statement executed by any contractor (or subcontractor) under contract with DOE to prepare the EIS document, in accordance with 40 CFR 1506.5(c).

[61 FR 36239, July 9, 1996]

**§ 1021.311 Notice of intent and scoping.**

(a) DOE shall publish an NOI in the FEDERAL REGISTER in accordance with 40 CFR 1501.7 and containing the elements specified in 40 CFR 1508.22 as soon as practicable after a decision is made to prepare an EIS. However, if there will be a lengthy period of time between its decision to prepare an EIS and the time of actual preparation, DOE may defer publication of the NOI until a reasonable time before preparing the EIS, provided that DOE allows a reasonable opportunity for interested parties to participate in the EIS process. Through the NOI, DOE shall invite comments and suggestions on the scope of the EIS. DOE shall disseminate the NOI in accordance with 40 CFR 1506.6.

(b) If there will be a lengthy delay between the time DOE has decided to prepare an EIS and the beginning of the public scoping process, DOE may publish an Advance NOI in the FEDERAL REGISTER to provide an early opportunity to inform interested parties of the pending EIS or to solicit early public comments. This Advance NOI does